IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.2457 OF 1986

V.M.Parekh & Anr. ...Petitioners.

Vs.

M/s.Parekh Industries. ...Respondent.

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Mr.T.D. Deshpande i/b. Mr.A.A.Kumbhakoni for the Petitioners.

Mr.P.G.Lad for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

June 13, 2006.

P.C. :

The Petitioners are mortgagees in possession of the suit premises situated in Ashok Industrial Compound at Kaju Tekdi, Agra Road, Bhandup, Bombay-77. The Petitioners as such claimed that they were entitled to recover the rent

of the suit premises and in that capacity to be the landlords. The Respondent is a tenant in the suit premises and was inducted on a monthly rent of Rs.400/-. The Respondent was stated to be in arrears from 1st May 1966 and the Petitioners accordingly issued a notice to quit on 22nd September 1967 by which the demand for arrears of rent was made. The registered postal packet was returned without any endorsement. A suit for eviction was instituted before the Court of Small Causes, Mumbai. Issues were framed and evidence was adduced. The Trial Judge dismissed the suit by his judgment and order dated 30th April 1973. The Trial Judge held that the notice demanding rent under Section 12(2) had not been duly served and the registered packet had been returned without any endorsement by the postal authority. However, the Trial Court fixed the standard rent of the premises at Rs.126.33 per month. The order of the Trial Court was confirmed in appeal by the Appellate Bench of the Court of Small Causes which had confirmed the finding of fact that the notice of demand had not been served on the tenant.

There is a concurrent finding in the present case that the notice of demand has not been duly served. That being the position, both the Courts below were justified in taking the view that a decree on the ground of default of payment of rent could not be passed.

On behalf of the Petitioner it has, however, been submitted that the Trial Court was not justified merely on the basis of the written statement of the tenant in proceeding to fix standard rent without a formal application under Section 11(1) of the Act. The issue in this regard is covered by a judgment of A.P.Shah, J. (as the Learned Judge then was) in **Lalji Laccamandas v. Amiruddin Amanulla**, 1998 Bom.R.C. 493. Relying upon the judgments of the Division Bench of this Court in **Jaypal Bandu Adake v. Basavali Gurua lingappa Mhalank,** 1982 Mh. L.J. and **Chhaganlal v. Naryan Jagannath**, 1983 Mh.L.J. 251, the Learned Single Judge held that the dispute of standard rent cannot be entertaiend unless the tenant has made an application for that purpose within a month from the receipt of the notice. The judgments of the

Division Bench are also consistent with the law laid down by the Supreme Court in **Shah Dhansukhlal Chhaganlal v. Dalichand Virchand** 70 BLR 714 and in **Harbanslal Jagmohandas v. Probhudas Shivalla**, AIR 1976 SC 2005.

In the present case, the question of arrears of rent would assume some significance if there had been a valid notice duly demanding the rent. In the absence of such a notice, the question of fixation of standard rent assumes subsidiary significance. Be that as it may, in view of the position of law laid down, following the decision of the Supreme Court, the order of the Trial Judge, confirmed in appeal, determining the standard rent of the premises, shall stand quashed and set aside. This shall, however, not preclude the Respondent from moving an appropriate application should it be advised to do so at an appropriate stage.

The Petition is accordingly disposed of. In the circumstances, there shall be no order as to costs.

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